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10/621,430

07/16/2003

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EXAMINER

WRIGHT, PATRICIA KATHRYN

ART UNIT

PAPER NUMBER

1797

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DELIVERY MODE

04/10/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

| | | | |
|------------------------------|--------------------------------------|---------------------------------------|--|
| Office Action Summary | Application No. 10/621,430 | Applicant(s) SHAW, JAMES D. | |
| | Examiner P. Kathryn Wright | Art Unit 1797 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 26 February 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,3-5,7-11,14-19,35-43 and 46-48 is/are pending in the application.
- 4a) Of the above claim(s) 15-19,35-43 and 47 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,3-5,7-11,14,46 and 48 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 13 July 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Status of the Claims

1. This action is in response to papers filed February 26, 2008 in which claims 1, 5, 7-8, 10 and 16 were amended, claims 2, 6, 12-13 and 44-45 were canceled, and claim 48 was added. The amendments have been thoroughly reviewed and entered.

Applicant's arguments have been thoroughly reviewed. Any objection/rejection not repeated herein has been withdrawn by the Office. New grounds for rejection, necessitated by the amendments (e.g., new recess in claim 10), are discussed.

Claims 1, 3- 5, 7-11, 46 and 48 are currently under examination.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claim 10 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 10 now recites "a recess". It is not clear from the claim whether Applicant intends this limitation to be the same or an additional "recess" recited in claim 1 from which claim 10 currently depends. Clarification is required.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 1, 8-11 and 14 remain rejected under 35 U.S.C. 102(b) as being anticipated by Gordon Hoare (GB 2 118 155A).

Hoare teaches a closure 2 for a container 1. The closure 2 includes annular support member 3 and grub screw 22 act to seal off the channel 20. The closure also includes an inner cylindrical wall 19 including first and second ends (top and bottom of closure, respectively) that define a space in which the top surface of the container fits. The closure also includes an outer cylindrical wall 3 opposite the inner cylindrical wall having the first and second ends (top and bottom of closure) to form an outer surface of the closure and a second set of threads (see reference no. 14).

Further, the closure of Hoare includes a first end wall extending across the first end (top) and includes a recess extending at least partially into the space and a first set of threads disposed on the recess that engage corresponding threads on the grub screw (Fig. 1). The recess has a second end wall (23) located at the bottom that is opposite the first end wall at the top (claim 8). The recess is "adapted to" receive a threaded spindle (i.e., reads on grub screw 22). Furthermore, note that it has been held that the recitation that an element is "adapted to" perform a function is not a positive

limitation but only requires the ability to so perform. It does not constitute a limitation in any patentable sense. *In re Hutchison*, 69 USPQ 138.

In addition, as shown in the Figure of Hoare, the second set of threads (lines 20-24) formed by outer wall 3 have a direction which is "opposite" that of the first set of threads. That is, the first set of threads (i.e., disposed in the recess) are female or inside threads (that accept the male threads of the grub screw 22). Conversely, the second set of threads formed by outer wall 3 is male or external threads (see reference no. 14 in Fig. 1). Hence, the first and second set of threads do have an "opposite threaded design". USPTO personnel are to give claims their broadest reasonable interpretation in light of the supporting disclosure. **Limitations appearing in the specification but not recited in the claim should not be read into the claim.** See MPEP 2106 (II,C). The claims merely require the first and second set of threads be "opposite" in direction. Giving the claims the broadest reasonable interpretation without importing limitations from the specification into the claim, the first and second threads of Hoare are inside and external threads, therefore, have an opposite threaded design.

Regarding claims 10-11, Hoare teaches a circumferential rib 7 (reads on plug seal and crush rib since the claims do not set forth any structural details which differentiate it from the sealing circumferential rib of Hoare). Hoare teaches that the seal 7 located between a recess and the outer cylindrical wall 3 maybe detachable from the body of the tube and made from a deformable material. This creates a sealing arrangement between the closure member 2 and tube (see lines 46-72.)

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

6. Claims 3-5, 7, 46 and 48 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gordon Hoare (GB 2 118 155A) in view of Daubert et al., (US Patent Pub. No. 2001/0000793), (hereinafter "Daubert").

The teachings of Hoare have been summarized previously, *supra*. Hoare does not teach a closure comprising a plurality of ramp-shaped protrusions or ridges arranged along the radial perimeter of the end wall and which extend in a direction away from the closure. Furthermore, Hoare does not teach the use of dual lead threads. However, the use of ramp-shaped protrusions (claims 4-5 and new claim 48) or ridges (claim 7) and dual lead threads (claim 46) in a closure means is considered conventional in the art, see for example, Daubert.

Daubert teaches a closure assembly 46 for a container 30. The closure assembly of Daubert includes a plurality of ramp-shaped protrusions or ridges (no reference no; Figs. 1-2) arranged along the radial perimeter of the end wall and extend in a direction away from the closure that provides a means for gripping by the user during the opening/closing process. Moreover, Dauber does teach the use of conventional dual lead thread formation 100 [paragraph 81].

Accordingly, it would have been obvious to one of ordinary skill in the art at the time of the claimed invention to have included in the closure of Hoare, the plurality of ramp-shaped protrusions or ridges arranged along the radial perimeter for the end wall that extend in a direction away from the closure in order to provide an easy means for gripping by the user during the opening/closing process of the container.

Response to Arguments

7. Applicant's arguments filed February 26, 2008 have been fully considered but they are not persuasive.

In response to the previous rejection of claims 1-2 and 8-14, under 35 U.S.C. 102(b) as being anticipated by Gordon Hoare (GB 2 118 155A), Applicant argues that Hoare fails to teach or suggest the first and second set of threads having an opposite threaded design. Furthermore, Applicant assumes that since most threads are generally configured as having a "right handed configuration", the threads of Hoare must be of a "right handed configuration". Applicant also assumes that one would expect the same configuration for each set of threads.

The Examiner respectfully disagrees with Applicant's assertions. First, the Examiner can not find any disclosure in Hoare which indicates the threads of Hoare are of a "right handed configuration" or the "same configuration". Therefore, looking to the Figure of Hoare, the first set of threads (i.e., disposed in the recess) are shown as female or inside threads (i.e., configured to accept the male threads of the grub screw 22). The figure of Hoare also illustrates the second set of threads formed by outer wall 3 having male or external threads (see reference no. 14) which mate with the female or inside threads (see reference no. 15) of the closure 2. Therefore, giving the claims the broadest reasonable interpretation without importing limitations into the claims from the specification, the first and second set of threads of Hoare have an "opposite threaded design", i.e., external versus inside threads.

Also, it is noted that the features upon which Applicant relies (i.e., right hand configuration/ left hand configuration) are not recited in the rejected claims. Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

Therefore, for the reasons delineated above, claims 1, 8-11 and 14 remain rejected under 35 U.S.C. 102(b) as being anticipated by Hoare.

Conclusion

8. No claims are allowed.

9. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to P. Kathryn Wright whose telephone number is 571-272-2374. The examiner can normally be reached on Monday thru Thursday, 9 AM to 6 PM, EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jill Warden can be reached on 571-272-1267. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 1797

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

April 10, 2008

pkw

/Jill Warden/

Supervisory Patent Examiner, Art Unit 1797